

AMENDED IN SENATE JUNE 29, 2016

AMENDED IN SENATE JUNE 20, 2016

AMENDED IN SENATE JUNE 9, 2016

AMENDED IN ASSEMBLY APRIL 11, 2016

AMENDED IN ASSEMBLY MARCH 31, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2235

Introduced by Assembly Member Thurmond

February 18, 2016

An act to amend Sections 1680 and 1682 of, and to add Section 1601.4 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL’S DIGEST

AB 2235, as amended, Thurmond. Board of Dentistry: pediatric anesthesia: committee.

The Dental Practice Act provides for the licensure and regulation of dentists by the Dental Board of California. That act authorizes a committee of the board to evaluate all suggestions or requests for regulatory changes related to the committee and to hold informational hearings in order to report and make appropriate recommendations to the board, after consultation with departmental legal counsel and the board’s chief executive officer. The act requires a committee to include in any report regarding a proposed regulatory change, at a minimum, the specific language or the proposed change or changes and the reasons therefor, and any facts supporting the need for the change.

The act governs the use of general anesthesia, conscious sedation, and oral conscious sedation for pediatric and adult patients. The act makes it unprofessional conduct for a licensee to fail to report the death of a patient, or removal of a patient to a hospital or emergency center for medical treatment, that is related to a dental procedure, as specified. The act also makes it unprofessional conduct for any dentist to fail to obtain the written informed consent of a patient prior to administering general anesthesia or conscious sedation. In the case of a minor, the act requires that the consent be obtained from the child's parent or guardian.

~~This bill, which would be known as "Caleb's Law," would require the board, on or before February 1, 2017, to establish a committee to investigate whether the current statutes and regulations for the administration and monitoring of oral conscious sedation, conscious sedation, and general anesthesia provide adequate protection for pediatric dental patients. The bill would require the committee, on or before August 1, 2017, to review all incident reports and relevant investigatory information related to pediatric anesthesia in dentistry in the state for the years 2010 to 2016, inclusive, and to review the policies and guidelines of other states and national dental associations, as well as studies, to ensure that the state's statutes and regulations adequately protect pediatric dental patients. The bill would require the committee, on or before November 1, 2017, to present its findings in a report to the board, including any recommendations necessary to improve safety. The bill would require the board, on or before January 1, 2018, to provide to the Legislature the committee's recommendations, an evaluation of the committee's report, and the board's own recommendations and to make the report publicly available on the board's Internet Web site. The bill also would require the board to provide a report on pediatric deaths related to general anesthesia in dentistry at the time of its sunset review by the appropriate policy committees of the Legislature.~~

This bill, which would be known as "Caleb's Law," would require the board, on or before January 1, 2017, to provide to the Legislature a report on whether current statutes and regulations for the administration and monitoring of pediatric anesthesia in dentistry provide adequate protection for pediatric dental patients and would require the board to make the report publicly available on the board's Internet Web site. The bill also would require the board to provide a report on pediatric deaths related to general anesthesia in dentistry at

the time of its sunset review by the appropriate policy committees of the Legislature.

This bill would require that the report of the death of a patient, or removal of a patient to a hospital or emergency center for medical treatment, be on a form or forms approved by the board and that the report include specified information. The bill authorizes the board to assess a penalty on any licensee who fails to make the required report.

This bill, with regard to obtaining written informed consent for general anesthesia or conscious sedation in the case of a minor, would require that the written informed consent include specified information regarding anesthesia, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as
2 “Caleb’s Law.”

3 SEC. 2. It is the Legislature’s intent, to the extent that funds
4 are appropriated for this purpose, that the board encourage all
5 dental sedation providers in California to submit data regarding
6 pediatric sedation events to a pediatric sedation research database
7 maintained by a nonprofit organization. It is the goal of the
8 Legislature that the data submitted will be used to formulate a
9 systems-based approach to improve the quality of services provided
10 to pediatric dental anesthesia patients in outpatient settings.

11 SEC. 3. Section 1601.4 is added to the Business and Professions
12 Code, to read:

13 1601.4. (a) ~~The board, on or before February 1, 2017, shall~~
14 ~~establish a committee to investigate whether current statutes and~~
15 ~~regulations for the administration and monitoring of oral conscious~~
16 ~~sedation, conscious sedation, and general anesthesia provide~~
17 ~~adequate protection for pediatric dental patients. For the purpose~~
18 ~~of this section, a pediatric dental patient is a person under 21 years~~
19 ~~of age.~~

20 (b) ~~On or before August 1, 2017, the committee shall review~~
21 ~~all incident reports and relevant investigatory information related~~
22 ~~to pediatric anesthesia in dentistry in the state for the years 2010~~
23 ~~to 2016, inclusive, and shall review the policies and guidelines of~~
24 ~~other states and national dental associations as well as studies~~

1 regarding the use of pediatric anesthesia to ensure that the state's
2 statutes and regulations adequately protect pediatric dental patients.
3 ~~The committee also shall review statutory and regulatory~~
4 ~~definitions relating to sedation and anesthesia and recommend any~~
5 ~~necessary revisions. The members of the committee shall agree~~
6 ~~not to disclose any confidential, privileged, or personally~~
7 ~~identifiable information contained in the dental board records,~~
8 ~~except as permitted by law.~~

9 (e) ~~On or before November 1, 2017, the committee shall present~~
10 ~~its findings to the board in a report which shall include any~~
11 ~~recommendations necessary to improve safety during the~~
12 ~~administration and monitoring of oral conscious sedation, conscious~~
13 ~~sedation, and general anesthesia for pediatric dental patients.~~

14 (d) ~~On or before January 1, 2018, the board shall provide to the~~
15 ~~Legislature the recommendations of the committee pursuant to~~
16 ~~subdivision (e), an evaluation of the report, and the board's own~~
17 ~~recommendations. The report shall be submitted in compliance~~
18 ~~with Section 9795 of the Government Code. The requirement for~~
19 ~~submitting a report imposed by this subdivision is inoperative on~~
20 ~~December 1, 2021, pursuant to Section 10231.5 of the Government~~
21 ~~Code. The board shall make the report publicly available on the~~
22 ~~board's Internet Web site, and shall include, but is not limited to,~~
23 ~~the following anonymized data from each incident reviewed, if~~
24 ~~available from records in the board's possession, custody, or~~
25 ~~control, including investigatory reports: the age of the patient; the~~
26 ~~patient's primary diagnosis; the procedures performed; the sedation~~
27 ~~setting; the medications used; the monitoring equipment used; the~~
28 ~~category of the provider responsible for sedation oversight; the~~
29 ~~category of the provider delivering sedation; the category of the~~
30 ~~provider monitoring the patient during sedation; whether the person~~
31 ~~supervising the sedation performed one or more of the procedures;~~
32 ~~the category of the provider conducting resuscitation measures;~~
33 ~~and the resuscitation equipment utilized.~~

34 (e) ~~For the purposes of subdivision (d), categories of provider~~
35 ~~are: General Dentist, Pediatric Dentist, Oral Surgeon, Dentist~~
36 ~~Anesthesiologist, Physician Anesthesiologist, Dental Assistant,~~
37 ~~Registered Dental Assistant, Dental Sedation Assistant, Registered~~
38 ~~Nurse, Certified Registered Nurse Anesthetist, or Other.~~

1 ~~(f) The board shall provide a report on pediatric deaths related~~
2 ~~to general anesthesia in dentistry at the time of its sunset review~~
3 ~~pursuant to subdivision (d) of Section 1601.1.~~

4 *(a) On or before January 1, 2017, the board shall provide to*
5 *the Legislature a report on whether current statutes and*
6 *regulations for the administration and monitoring of pediatric*
7 *anesthesia in dentistry provide adequate protection for pediatric*
8 *dental patients. The report shall be submitted in compliance with*
9 *Section 9795 of the Government Code. The requirement for*
10 *submitting a report imposed by this subdivision is inoperative on*
11 *December 1, 2021, pursuant to Section 10231.5 of the Government*
12 *Code. The board shall make the report publicly available on the*
13 *board's Internet Web site.*

14 *(b) The board shall provide a report on pediatric deaths related*
15 *to general anesthesia in dentistry at the time of its sunset review*
16 *pursuant to subdivision (d) of Section 1601.1.*

17 SEC. 4. Section 1680 of the Business and Professions Code is
18 amended to read:

19 1680. Unprofessional conduct by a person licensed under this
20 chapter is defined as, but is not limited to, any one of the following:

21 (a) The obtaining of any fee by fraud or misrepresentation.

22 (b) The employment directly or indirectly of any student or
23 suspended or unlicensed dentist to practice dentistry as defined in
24 this chapter.

25 (c) The aiding or abetting of any unlicensed person to practice
26 dentistry.

27 (d) The aiding or abetting of a licensed person to practice
28 dentistry unlawfully.

29 (e) The committing of any act or acts of sexual abuse,
30 misconduct, or relations with a patient that are substantially related
31 to the practice of dentistry.

32 (f) The use of any false, assumed, or fictitious name, either as
33 an individual, firm, corporation, or otherwise, or any name other
34 than the name under which he or she is licensed to practice, in
35 advertising or in any other manner indicating that he or she is
36 practicing or will practice dentistry, except that name as is specified
37 in a valid permit issued pursuant to Section 1701.5.

38 (g) The practice of accepting or receiving any commission or
39 the rebating in any form or manner of fees for professional services,

1 radiograms, prescriptions, or other services or articles supplied to
2 patients.

3 (h) The making use by the licensee or any agent of the licensee
4 of any advertising statements of a character tending to deceive or
5 mislead the public.

6 (i) The advertising of either professional superiority or the
7 advertising of performance of professional services in a superior
8 manner. This subdivision shall not prohibit advertising permitted
9 by subdivision (h) of Section 651.

10 (j) The employing or the making use of solicitors.

11 (k) The advertising in violation of Section 651.

12 (l) The advertising to guarantee any dental service, or to perform
13 any dental operation painlessly. This subdivision shall not prohibit
14 advertising permitted by Section 651.

15 (m) The violation of any of the provisions of law regulating the
16 procurement, dispensing, or administration of dangerous drugs,
17 as defined in Chapter 9 (commencing with Section 4000) or
18 controlled substances, as defined in Division 10 (commencing
19 with Section 11000) of the Health and Safety Code.

20 (n) The violation of any of the provisions of this division.

21 (o) The permitting of any person to operate dental radiographic
22 equipment who has not met the requirements of Section 1656.

23 (p) The clearly excessive prescribing or administering of drugs
24 or treatment, or the clearly excessive use of diagnostic procedures,
25 or the clearly excessive use of diagnostic or treatment facilities,
26 as determined by the customary practice and standards of the dental
27 profession.

28 Any person who violates this subdivision is guilty of a
29 misdemeanor and shall be punished by a fine of not less than one
30 hundred dollars (\$100) or more than six hundred dollars (\$600),
31 or by imprisonment for a term of not less than 60 days or more
32 than 180 days, or by both a fine and imprisonment.

33 (q) The use of threats or harassment against any patient or
34 licensee for providing evidence in any possible or actual
35 disciplinary action, or other legal action; or the discharge of an
36 employee primarily based on the employee's attempt to comply
37 with the provisions of this chapter or to aid in the compliance.

38 (r) Suspension or revocation of a license issued, or discipline
39 imposed, by another state or territory on grounds that would be
40 the basis of discipline in this state.

1 (s) The alteration of a patient's record with intent to deceive.

2 (t) Unsanitary or unsafe office conditions, as determined by the
3 customary practice and standards of the dental profession.

4 (u) The abandonment of the patient by the licensee, without
5 written notice to the patient that treatment is to be discontinued
6 and before the patient has ample opportunity to secure the services
7 of another dentist, registered dental hygienist, registered dental
8 hygienist in alternative practice, or registered dental hygienist in
9 extended functions and provided the health of the patient is not
10 jeopardized.

11 (v) The willful misrepresentation of facts relating to a
12 disciplinary action to the patients of a disciplined licensee.

13 (w) Use of fraud in the procurement of any license issued
14 pursuant to this chapter.

15 (x) Any action or conduct that would have warranted the denial
16 of the license.

17 (y) The aiding or abetting of a licensed dentist, dental assistant,
18 registered dental assistant, registered dental assistant in extended
19 functions, dental sedation assistant permitholder, orthodontic
20 assistant permitholder, registered dental hygienist, registered dental
21 hygienist in alternative practice, or registered dental hygienist in
22 extended functions to practice dentistry in a negligent or
23 incompetent manner.

24 (z) (1) The failure to report to the board in writing within seven
25 days any of the following: (A) the death of his or her patient during
26 the performance of any dental or dental hygiene procedure; (B)
27 the discovery of the death of a patient whose death is related to a
28 dental or dental hygiene procedure performed by him or her; or
29 (C) except for a scheduled hospitalization, the removal to a hospital
30 or emergency center for medical treatment of any patient to whom
31 oral conscious sedation, conscious sedation, or general anesthesia
32 was administered, or any patient as a result of dental or dental
33 hygiene treatment. With the exception of patients to whom oral
34 conscious sedation, conscious sedation, or general anesthesia was
35 administered, removal to a hospital or emergency center that is
36 the normal or expected treatment for the underlying dental
37 condition is not required to be reported. Upon receipt of a report
38 pursuant to this subdivision the board may conduct an inspection
39 of the dental office if the board finds that it is necessary. A dentist
40 shall report to the board all deaths occurring in his or her practice

1 with a copy sent to the Dental Hygiene Committee of California
2 if the death was the result of treatment by a registered dental
3 hygienist, registered dental hygienist in alternative practice, or
4 registered dental hygienist in extended functions. A registered
5 dental hygienist, registered dental hygienist in alternative practice,
6 or registered dental hygienist in extended functions shall report to
7 the Dental Hygiene Committee of California all deaths occurring
8 as the result of dental hygiene treatment, and a copy of the
9 notification shall be sent to the board.

10 (2) The report required by this subdivision shall be on a form
11 or forms approved by the board. The form or forms approved by
12 the board shall require the licensee to include, but not be limited
13 to, the following information for cases in which patients received
14 anesthesia: the date of the procedure; the patient's age in years
15 and months, weight, and sex; the patient's American Society of
16 Anesthesiologists (ASA) physical status; the patient's primary
17 diagnosis; the patient's coexisting diagnoses; the procedures
18 performed; the sedation setting; the medications used; the
19 monitoring equipment used; the category of the provider
20 responsible for sedation oversight; the category of the provider
21 delivering sedation; the category of the provider monitoring the
22 patient during sedation; whether the person supervising the sedation
23 performed one or more of the procedures; the planned airway
24 management; the planned depth of sedation; the complications
25 that occurred; a description of what was unexpected about the
26 airway management; whether there was transportation of the patient
27 during sedation; the category of the provider conducting
28 resuscitation measures; and the resuscitation equipment utilized.
29 Disclosure of individually identifiable patient information shall
30 be consistent with applicable law. A report required by this
31 subdivision shall not be admissible in any action brought by a
32 patient of the licensee providing the report.

33 (3) For the purposes of paragraph (2), categories of provider
34 are: General Dentist, Pediatric Dentist, Oral Surgeon, Dentist
35 Anesthesiologist, Physician Anesthesiologist, Dental Assistant,
36 Registered Dental Assistant, Dental Sedation Assistant, Registered
37 Nurse, Certified Registered Nurse Anesthetist, or Other.

38 (4) The form shall state that this information shall not be
39 considered an admission of guilt, but is for educational, data, or
40 investigative purposes.

1 (5) The board may assess a penalty on any licensee who fails
2 to report an instance of an adverse event as required by this
3 subdivision. The penalty is a maximum fine of one hundred dollars
4 (\$100) per day not reported after the initial seven-day reporting
5 period. The licensee may dispute the failure to file within 10 days
6 of receiving notice that the board had assessed a penalty against
7 the licensee.

8 (aa) Participating in or operating any group advertising and
9 referral services that are in violation of Section 650.2.

10 (ab) The failure to use a fail-safe machine with an appropriate
11 exhaust system in the administration of nitrous oxide. The board
12 shall, by regulation, define what constitutes a fail-safe machine.

13 (ac) Engaging in the practice of dentistry with an expired license.

14 (ad) Except for good cause, the knowing failure to protect
15 patients by failing to follow infection control guidelines of the
16 board, thereby risking transmission of bloodborne infectious
17 diseases from dentist, dental assistant, registered dental assistant,
18 registered dental assistant in extended functions, dental sedation
19 assistant permitholder, orthodontic assistant permitholder,
20 registered dental hygienist, registered dental hygienist in alternative
21 practice, or registered dental hygienist in extended functions to
22 patient, from patient to patient, and from patient to dentist, dental
23 assistant, registered dental assistant, registered dental assistant in
24 extended functions, dental sedation assistant permitholder,
25 orthodontic assistant permitholder, registered dental hygienist,
26 registered dental hygienist in alternative practice, or registered
27 dental hygienist in extended functions. In administering this
28 subdivision, the board shall consider referencing the standards,
29 regulations, and guidelines of the State Department of Public
30 Health developed pursuant to Section 1250.11 of the Health and
31 Safety Code and the standards, guidelines, and regulations pursuant
32 to the California Occupational Safety and Health Act of 1973 (Part
33 1 (commencing with Section 6300) of Division 5 of the Labor
34 Code) for preventing the transmission of HIV, hepatitis B, and
35 other blood-borne pathogens in health care settings. The board
36 shall review infection control guidelines, if necessary, on an annual
37 basis and proposed changes shall be reviewed by the Dental
38 Hygiene Committee of California to establish a consensus. The
39 committee shall submit any recommended changes to the infection
40 control guidelines for review to establish a consensus. As

1 necessary, the board shall consult with the Medical Board of
2 California, the California Board of Podiatric Medicine, the Board
3 of Registered Nursing, and the Board of Vocational Nursing and
4 Psychiatric Technicians, to encourage appropriate consistency in
5 the implementation of this subdivision.

6 The board shall seek to ensure that all appropriate dental
7 personnel are informed of the responsibility to follow infection
8 control guidelines, and of the most recent scientifically recognized
9 safeguards for minimizing the risk of transmission of bloodborne
10 infectious diseases.

11 (ae) The utilization by a licensed dentist of any person to
12 perform the functions of any registered dental assistant, registered
13 dental assistant in extended functions, dental sedation assistant
14 permitholder, orthodontic assistant permitholder, registered dental
15 hygienist, registered dental hygienist in alternative practice, or
16 registered dental hygienist in extended functions who, at the time
17 of initial employment, does not possess a current, valid license or
18 permit to perform those functions.

19 (af) The prescribing, dispensing, or furnishing of dangerous
20 drugs or devices, as defined in Section 4022, in violation of Section
21 2242.1.

22 SEC. 5. Section 1682 of the Business and Professions Code is
23 amended to read:

24 1682. In addition to other acts constituting unprofessional
25 conduct under this chapter, it is unprofessional conduct for:

26 (a) Any dentist performing dental procedures to have more than
27 one patient undergoing conscious sedation or general anesthesia
28 on an outpatient basis at any given time unless each patient is being
29 continuously monitored on a one-to-one ratio while sedated by
30 either the dentist or another licensed health professional authorized
31 by law to administer conscious sedation or general anesthesia.

32 (b) Any dentist with patients recovering from conscious sedation
33 or general anesthesia to fail to have the patients closely monitored
34 by licensed health professionals experienced in the care and
35 resuscitation of patients recovering from conscious sedation or
36 general anesthesia. If one licensed professional is responsible for
37 the recovery care of more than one patient at a time, all of the
38 patients shall be physically in the same room to allow continuous
39 visual contact with all patients and the patient to recovery staff
40 ratio should not exceed three to one.

1 (c) Any dentist with patients who are undergoing conscious
2 sedation to fail to have these patients continuously monitored
3 during the dental procedure with a pulse oximeter or similar or
4 superior monitoring equipment required by the board.

5 (d) Any dentist with patients who are undergoing conscious
6 sedation to have dental office personnel directly involved with the
7 care of those patients who are not certified in basic cardiac life
8 support (CPR) and recertified biennially.

9 (e) (1) Any dentist to fail to obtain the written informed consent
10 of a patient prior to administering general anesthesia or conscious
11 sedation. In the case of a minor, the consent shall be obtained from
12 the child's parent or guardian.

13 (2) The written informed consent, in the case of a minor, shall
14 include, but not be limited to, the following information:

15 "The administration and monitoring of general anesthesia may
16 vary depending on the type of procedure, the type of practitioner,
17 the age and health of the patient, and the setting in which anesthesia
18 is provided. Risks may vary with each specific situation. You are
19 encouraged to explore all the options available for your child's
20 anesthesia for his or her dental treatment, and consult with your
21 dentist or pediatrician as needed."

22 (3) Nothing in this subdivision shall be construed to establish
23 the reasonable standard of care for administering or monitoring
24 oral conscious sedation, conscious sedation, or general anesthesia.